1952

File No. O. Requi. and Acqui./52

A BRANCH

P 13 (E)

K

A/57

Subject:—

Opinions under the Requisition and Acquisition of Immovable Property Act, 1952.

File No. O. Requi. & Acqui./52

528-A

C O N T E N T S.

Legal Department File No. O. Requi & Acqui/52.

Sr. No.	R.I./O.No.	Subject	Pages
		Opinions under the Requisition and Acquisition of Immovable Property Act 1952.	
1.	7300 8/5/52.	Whether the order of the derequisitioning lands in question can be issued by the Central Govt. under section 6 of the Requisitioning and Acquisition of Immoveable Property Act 1952.	1.
2.	8092 15/5/52.	Whether the provisions of the Land Acquisition Act 1894 can be applied to the lands which are under requisition on behalf of the Central Govt. and if so whether acquisition proceedings can be taken by the State Govt. under the Act while such lands are subject to requisition.	3-9.
3.	9842 16/5/52. 9442 6/6/52.	Whether the State Govt. is competent to appoint an arbitrator in view of the repeal of 1947 Act by section 24 of the Requisitioning and Acquisition of Immovable Property Act 1952 (XXX of 1952)	11-13.
4.	11191 7/7/52.	Cancellation of derequisitioning order for restoring original order -- Requisitioning and Acquisition of Immovable Property Act1952.	15.
5.	17414/A 21/10/52.	Whether the proceedings for settlement of compensation will now have to be conducted under the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952.	17.
6.	17207 16/10/52.	Under the provisions of Section 17 of the Act the powers exercisable by the Central Govt. can be delegated to the State Government and not to officers subordinate to the State Govt.	19-21.

Rele.M.S.
22/6/56.

A
29/6

Legal Department.

The view taken by Revenue Department in paragraph 2 of its note is correct. The order of the derequisitioning of lands in question will have, however, to be issued by the Central Government under section 6 of the Requisitioning and Acquisition of Immovable Property Act, 1952, or by an officer authorized under section 17 thereof.

Incidentally it may be observed that the plots are required for the purposes of the Union. A preliminary as well as final notification under sections 4 and 6 respectively of the Land Acquisition Act, 1894, will have to be issued by the Central Government unless the power of the Central Government has been entrusted under article 258(1) of the Constitution of India to the Bombay Government or an officer subordinate to it.

Id/-
8/5.
Additional Secreary to Government.

U.R. to R.D. No. 7300, dated 8th May 1952.

MSR.
22/6.

Office of the R.L.A.

The questions referred to the R.L.A. for advice are asfollows:-

(1) What the effect would be of the delegation, under section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952, of the powers exercisable by the Central Government by or under the Act to the State Government, so far as it concerns the State Govt.'s power to take action under section 7 for the acquisition of the property which is subject to the requisition by the Central Government.

(2) Whether the State Government would be competent to decide whether either of the circumstances mentioned in clauses (a) and (b) of sub-section (3) of section 7 of the Requisitioning and Acquisition of Immovable Property Act, 1952 exist in the present case, if the power to acquire is delegated to the State Government under section 17 of the Act.

(3) Whether the provisions of the Land Acquisition Act, 1894, can be applied to the lands which are under requisition on behalf of the Central Govefnment and if so whether acquisition proceedings can be taken by the State Government under the Act while such lands are subject to requisition.

MSR.
22/6.

Questions (1) and (2).- Under section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952, the Central Government may by notification in the Official Gazette direct that the powers exercisable by it by or under this Act shall in such circumstances and under such conditions, if any, as may be specified in this notification be exercisable also by an officer subordinate to that Government or the State Government. Although under this section the powers of the Central Government can be delegated, it is an established principle that the delegate cannot exercise powers wider in extent or in nature different from those conferred by the statute upon the principal. The delegate's exercise of power will still be circumscribed by the limitations contained in section 7. Sub-section (1) of that section uses the expression "to acquire the property for a public purpose". Clause (a) of sub-section (3) uses the expression "preserved for the purposes of Government". Apparently therefore, the change of language would suggest that clause (a) of sub-section (3) would be attracted only where the purpose is a purpose of Government in the narrow sense, i.e., a truly governmental purpose as distinguished from the wider category of public purpose, as which, moreover, under the scheme of the Act must be a purpose of the Union. Even assuming that the expression "purpose of the Union" can be given the wider meaning so as to include therein a purpose connected with a subject-matter assigned to the Union and rehabilitation is one such purpose (entry No.27 in List III) -, nevertheless in order to attract clause (a) of sub-section (3) the purpose must be a governmental pupose in the narrow sense mentioned above

That is also apparent from the structure of clause (a) the whole justification of which is tht since the money belongin to the Central Government has been invested in the property, preference should be given to the Central Government to acquire it for its own governmental purpose Rehabilitation through a co-operative society will not be a governmental purpose in this sense; and, therefore, clause (a) will not be attracted. Whether clause (b) is attracted or not is a question offact. In any case the limitations of clauses (a) and (b) will be binding upon the delegate. Although sub-section (4) of section 7 invests the decision or determination under sub-section (3) with finality, that provision cannot be used for legalising a decision which is perverse or which has no relation to the facts. The finality intended by sub-section (4) cannot be used for holding a purpose to be a governmental purpose if in fact it is patently not so. Similarly, if the facts required by clause (b) of sub-section (3) are not available, the provisions of sub-section (4) cannot cure that position. If the delegate comes to an opinion which is flagrantly opposed to reality or the facts, Courts are bound to interfere. This disposes of the first two questions.

Question No.(3).- On this question it may be observed that although ordinarily proceedings can be commenced for acquisition undersection 4 of the Land Acquisition Act in respect of a land which is under requisition, the provisions of the Requisitioning and Acquisition of Immovable Property Act, 1952, would create some difficulties. The proviso to sub-section (1) of section 6 of that Act enacts that where the purposes for which any requisitioned property was being used cease to exist, the Central Government shall, unless the property is acquired

under section 7, release that property as soon as may be from requistion. This proviso casts an obligation upon the Central Government to release the property when the purposes for which it was requisitioned have come to an end. A property which continues under requistion under the Act cannot be acquired except with the consent of the Govt. of India and in giving that consent the Government of India would be declaring that the purposes for which it was requisitioned have come to an end. Therefore, it would be their duty to release it from requistion first before acquistion proceedings can be commenced by this Government. That might lead to complications about the claim for structures. The safest course would be for the Govt. of Bombay to proceed under section 7(1) of the Bombay Land Requisition Act, 1948 (the reference in this section to the provisions of the Requisitioned Land (Continuance of Powers) Act, 1946, would have to be read as references to the Requisitioning and Acquisition of Immovable Property Act, 1952, by virtue of section 8 of the General Clauses Act, 1897). An order as contemplated therein may be made, and thereafter the Government of India may release the property from requistion; but before doing so transfer the structures to the Govt. of Bombay. When all this is done, the Govt. of Bombay can then commence acquisition proceedings which will then be confined only to the proprietary interests in the land and the compensation therefor at the market value on the date of the publication of the notification under section 4(1) of the Land Acquisition Act or on the relevant date, i.e.,

1st January 1948, whichever is less.

Id/-

Remembrancer of Legal Affairs.

U.R. to R.H.D.No. 8092, dated 15th May 1952.

MSR.
22/6.

Legal Department
9842 dt. 16.5.52.

Submitted with reference to the R.D. note at page 1 ante. The Collector of Poona in his letter at pp.1-2 of the Correspondence Section has proposed the appointment of an arbitrator to determine the amount of compensation payable to one Ambaram Rupaji Merchant whose land bearing S.No.50 of Pashan was first requisitioned for military purposes in June 1943 and subsequently in November 1949 acquired under section 5 of the Requisitioned Land (Continuation of Powers) Act, 1947. The R.D. referring to Additional Secretary's opinion No.5403, dated 10/4/1952, considers that in view of the repeal of the 1947 Act by section 24 of the Requisitioning and Acquisition of Immovable Property Act, 1952 (XXX of 1952) it is not competent for the State Government to appoint an arbitrator as proposed by the Collector of Poona and proposes to refer the matter to the Government of India. The papers are shown to the R.L.A. before the Government of India is addressed in the matter

Id/-
4/6/52.

(D.S. ( ) As at 'A'.)

Id/-
5/6.

Addl. Secy. Id/-
5/6.

MSR.
22/6.

Legal Department.

Seen and returned.

Additional Secretary to Government,
Legal Department.

U.R. to R.D. No. 94420, dated the 6th June 1952.

MSR.
22/6.

OFFICE OF THE R.L.A.

Cancellation of derequisitioning order for restoring original Order.-

Requisitioning and Acquisition of Immoveable Property Act, 1952.

The view taken by R.D. is correct. By reason of derequisition the lands had ceased to be subject to requisition on the date on which the Requisitioning and Acquisition of Immoveable Property Act, 1952 came into force and consequently that Act would not be available to save requisitioning of these lands (see section 24(2) of the Act). The Requisitioned Land (Continuance of Powers) Act, 1947 whereunder the requisition of these lands was continued has been repealed by section 24(1) of the Requisitioning and Acquisition of Immoveable Property Act, 1952. In the circumstances it would not be legally feasible to cancel the derequisitioning order and to restore the original requisitioning order as proposed by the Collector of Nasik.

Id/-
7/7
Remembrancer of Legal Affairs.

U.R. to R.D.No. 11191, dated the 7th July 1952.

MSR.
22/6.

Office of the R.L.A.

The attention of the Revenue Department is invited to the R.L.A's opinion No.15876/B, dated the 26th September 1952 and the Government of India's opinion No.8/622/Claims/LHD/2114-LHD(O&C), dated the 16th June 1952 and the Revenue Department is informed that the view expressed in paragraph 2 of their office note at page 3 ante is correct.

Id/-
20/10.
Remembrancer of Legal Affairs.

U.R. to R.D.,No. 17414/A, dated the 21st October 1952.

ESR.
22/6.

Office of the R.L.A.

Section 17 of the Requisitioning and Acquisition of Immovable Property Act, 1952, provides as follows:-

"(1) The Central Government may, by Notification in the Official Gazette, direct that the powers exercisable by it by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in this notification, be exercisable also by an officer subordinate to that Government or the State Government.

(2) * * * *.

A plain reading of the section suggests that its correct interpretation is that the powers are exercisable by an officer subordinate to the Central Government or subordinate to the State Government. The disjunctive "or" is intended fordistinguishing between the Central Government and the State Government only. It is not intended for separating on the one hand the officers of the Central Government and the State Government itself. If that were the intention, the natural drafting should have been "by an officer subordiante to that Government or by the State Government". Moreover, there is no reason why such a distinction should be made. If the power is capable of being exercised by an officer subordinate to the Central Government, there should be no reason for confining its exercise only to the State Government and not officers subordinate to it, particularly when the circumstances and the conditions are also to be specified in the notification of delegation. For these-

reasons I am not inclined to accept the view taken by the Government of India. If, however, the Government of India still persist in that interpretation, the view expressed in paragraph 1 of the R.D. Draft letter would be correct and in order.

2. The position stated in para. 2 of the draft letter does not however appear to be correct. By their notification dated the 23rd April 1952 the Central Government have merely authorised the Collectors in this State to perform the functions of the competent authority under the Act as contemplated by section 2(b) of the Act. This does not, however, amount to the delegation of the powers of the Central Government under section 6 of the Act to the Collectors. The powers of the Central Government and of the competent authority are quite different. The view expressed by the R.D. in paragraph 2 of the draft letter dated 14th August 1952 (page 125 ante) at p. 149 and also in para (1) of their letter is not, therefore, correct.

Id/-

14/10.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 17207/A, dated 16th October 1952.

MSR.
22/6.